Timber Harvesting and Fishing Lodge Interests near Morrison Arm

Complaint Investigation 000284

FPB/IRC/59

January 2002

102-03053/

Table of Contents

The Investigation 1

Background 1

Relevant Legislation 2

Issues 2

Conclusions 8

Commentary 9

The Investigation

On December 13, 2000, the owner of a lodge on Babine Lake (the complainant) requested an investigation of the approval of forest development plan (FDP) amendment #17 for Canadian Forest Products' Forest Licence A16828.

The complainant also requested an administrative review of the FDP approval. The complainant maintained that the plan did not ensure adequate management and conservation of all forest resources.

On February 2, 2001, the Chair of the Forest Practices Board decided to refuse the request for an administrative review but identified several issues that required further investigation:

1. Did the FDP amendment properly consider forest ecosystem networks?
2. Did the FDP amendment comply with Code requirements for forest health?
3. Did the FDP amendment comply with the requirements for discretionary approval of cutblocks greater than 60 hectares?
4. Did the FDP amendment comply with Code requirements for consideration of the plan's effect on the complainant's business?

The Forest Practices Board examined the FDP amendment only. The Board did not examine activities that occurred after the approval of the FDP amendment and the submission of the complaint. During the investigation, the complainant submitted a separate complaint about several silviculture prescriptions. Those matters are the subject of a separate investigation and will be reported separately by the Board.

Additionally, the Board prefers to resolve issues in a complaint rather than merely investigate and report. Consequently, Board staff helped the participants discuss several issues that are not part of this investigation.

Background

Morrison Arm is located north of the town of Granisle, on Babine Lake, which is 80 kilometres northeast of Houston. The FDP amendment proposed cutblocks in the Granisle area along Babine Lake. The complainant owns a wilderness lodge located on Morrison Arm. Several of the proposed cutblocks were in the vicinity of the lodge. One of the cutblocks came within approximately 200 metres of the lodge. The FDP amendment added 57 cutblocks to the licensee's FDP, stating that the bulk of the proposed cutblocks and roads were to address spruce bark beetle and mountain pine beetle infestations.

The FDP amendment was available for public review and comment from May 3 to July 10, 2000. The licensee also held public meetings in Granisle on August 23, 2000, and again on October 24, 2000, to discuss the amendment.

On November 24, 2000, the district manager approved the amendment and proposed a rationale for his decision. He noted in his rationale that the licensee was required to have a qualified professional review the silviculture prescriptions to ensure wildlife concerns were addressed.

The district manager also required the licensee to refer several silviculture prescriptions to the complainant and the Ministry of Water, Land and Air Protection (formerly Ministry of Environment, Lands and Parks). Lastly, the district manager required the licensee to carry out archaeological impact assessments and pest incident surveys for several cutblocks.

Relevant Legislation

Forest Practices Code of British Columbia Act

Section 10 - FDPs: content

Section 39 - Review and comment

Section 41 - Approval of plans by district manager or designated environment official

Operational Planning Regulation

Section 7 - District manager may require referral of operational plans

Section 11 - Maximum cutblock size

Section 13 - Forest health assessment required before review of FDPs

Section 18 - Map and information requirements for all FDPs

Section 26 - Submitting FDP and assessments

Section 27 - Review

Section 37 - Information that must be available before a silviculture prescription may be approved

Issues

1. Did the FDP amendment properly consider forest ecosystem networks?

The complainant asserts that forest ecosystem networks (FENs) have not been considered in the FDP amendment.

Section 18(1)(e)(vi) of the *Operational Planning Regulation* (OPR) requires a licensee to identify known FENs. There are no known FENs in this area. Draft FENs were prepared in a June 2, 1995 report entitled *Habitat Mapping and Development of a Preliminary Ecosystem Network.* The report was prepared for the Morice Forest District's Small Business Forest Enterprise Program. The purpose of the report was to identify wildlife habitat types for planning purposes.

The report was created to aid negotiations during future planning processes, such as a land and resource management plan (LRMP) process. The draft FENs were based solely on habitat information and did not consider other resource values. Since the draft FENs were prepared, the Morice Forest District has not undertaken any LRMP processes. The draft FENs have not been declared higher level plans under the Code.

Some of the proposed cutblocks are in the draft FEN locations. The draft FENs are not shown in the FDP amendment. The draft FENs primarily identify key habitat for moose. The October 27, 2000 FDP amendment lists a range of measures that the licensee stated it would use to protect moose winter range. The amendment noted that the licensee would conduct stand-level assessments to determine which management technique would be most appropriate for a given cutblock. The techniques include:

- Distances to cover will average no more than 80 metres.
- Generally openings will average in the 5- to 10-hectare range in order to provide maximum edge and minimum dash distances.
- Aspen and aspen spruce types will be targeted for stand-level retention where it is available.
- Immature forest will be targeted for retention where it is available.
- Clumps or patches of understory will be targeted for retention where it is available.
- Cutblocks will be laid out with an irregular boundary to maximize the perimeter to area ratio.
- Stand-level retention will be located adjacent to riparian features where possible.
- In larger cutblocks, wildlife tree patches will be at least one hectare in size.
- Where ecologically appropriate, mixed conifer plantations will be prescribed.
- Where selective harvesting is proposed, at least 11 cubic metres per hectare of basal area with a variety of diameter classes will be retained.

On July 20, 2000, the Ministry of Water, Land and Air Protection (MWLAP) provided comments on the amendment. MWLAP recommended that a qualified professional should be consulted to develop appropriate prescriptions to maintain habitat in areas that act as wildlife travel corridors.

The district manager's rationale indicates that moose travel corridors were accounted for in his decision. The district manager instructed the licensee to have a qualified professional review the silviculture prescriptions and include measures for wildlife habitat protection in the plans.

There is no contravention of section 18(1)(e)(vi) of the OPR, the requirement to identify known FENs. The FENs were in draft form and have not been made known. However, the district manager did consider wildlife values when he determined that the amendment adequately managed and conserved the forest resources. The FDP amendment contained measures to manage moose winter range. The draft FENs primarily identify key habitat for moose. The district manager also followed the recommendation of MWLAP to require a qualified

professional review several of the silviculture prescriptions. Therefore, the approval of the FDP amendment properly considered the habitat values of the draft FENs.

2. Did the FDP amendment comply with the requirements for protecting forest health?

The complainant was concerned with the licensee's approach to managing bark beetles in the vicinity of the lodge. The complainant stated that, with all the resource values in the area, it would be more reasonable to only harvest trees that were infested with bark beetles, leaving as many healthy trees as possible.

Section 13(a) and section 18(1)(t) of the OPR requires the licensee to record and evaluate the occurrence of detected forest health factors either currently causing damage or that may potentially cause damage in its operating area. The licensee must include the results of the data and evaluation in the FDP. If risks to forest resources are significant, the licensee must also propose management strategies to reduce those risks during the term of the plan.

On December 16, 1998, the district manager met with the licensee and discussed his expectations for the 1999 FDP submission. The licensee was sent a summary of the district manager's expectations. The summary noted that the licensee was to provide a broad overview of the presence of pest or disease and provide a strategy to deal with them. The district manager further stated that beetle hazard/risk maps and beetle overview flights, should satisfy most information needs. The district manager reiterated these expectations in his November 24, 2000, rationale for approval of the amendment.

The licensee provided the FDP amendment for public review and comment on May 3, 2000. The amendment used information from both the joint Ministry of Forests (MOF) and licensee beetle aerial overview flights taken in the late summer of 1999, and beetle reconnaissance maps completed in February/March 2000. The amendment also made use of beetle risk-rating maps. The maps identified forest stands that were at greatest risk and susceptibility to bark beetles. The approach taken by the licensee in terms of forest health was consistent with the district manager's direction for forest development planning.

MOF staff raised concerns about the licensee's amendment submitted on May 15, 2000. MOF told the licensee that the FDP amendment needed to propose measures to mitigate potential negative impacts of harvesting on wildlife, visual quality, the operation of a trap line and the complainant's lodge, in the Morrison Arm area. On November 16, 2000, the licensee submitted changes to the FDP amendment. Changes were made to the cutblock strategies for blocks in the Morrison Arm area.

The approved FDP amendment provided cutblock strategies and harvesting variances for each of the proposed cutblocks. The strategies state that cutblocks with spruce or pine beetle infestations have "field estimates" of the percentage of trees attacked. During the review of the FDP amendment the district manager requested pest incidence surveys on several cutblocks including those in the Morrison Arm area. This information was required prior to completion of silviculture prescriptions.

The district manager's rationale also noted that by the time the amendment was approved, the aerial survey information was 15 months old. The rationale noted that the ministry and the licensee needed to develop a more responsive administrative system to address beetle infestations. The Board concurs that, in order for forest harvesting to be used as a control option for bark beetles, the planning and permitting process must be conducted in an effective time frame. There should be no beetle flights between identification of the infestation and harvesting.

It should be noted that the complainant had serious concerns with the forest health information in the amendment. Subsequent beetle probes and discussions amongst the complainant, MWLAP, and MOF led to refinements in the silviculture prescriptions. Unless the FDP amendment was submitted after the probes had taken place, this was unavoidable. An effective beetle control strategy requires forest stands infested with bark beetles to be dealt with prior to the next beetle flight.

At the time of submission, the licensee used the best information available to meet the conditions of the OPR. However, because of the length of time taken to prepare and approve the amendment, another aerial survey was completed.

The Board concludes that it would have been impractical to include the new survey information in the amendment. It is likely that some of the new information could be incorporated into the silviculture prescriptions. The Board concludes that the licensee met the conditions of section 13(a) of the OPR and section 18(1)(t). The licensee recorded the incidence of forest health factors (bark beetles) within the development plan amendment. The licensee also proposed management strategies to reduce the risks posed by bark beetles. The licensee was following a strategy that attempted to remove both infested and susceptible stands.

3. Did the FDP amendment comply with the requirements for discretionary approval of cutblocks greater than 60 hectares?

The complainant was concerned about the amount of harvesting in the Morrison Arm area. The area has been logged in the past, and the complainant was concerned about the licensee's proposal to harvest large cutblocks. The complainant was also concerned that the amendment was not consistent with *Biodiversity Guidebook* recommendations for spatial and temporal aspects of natural disturbances.

The Morice Forest District has not completed landscape unit planning. With no landscape unit objectives in place, there are no landscape unit boundaries nor are there any biodiversity objectives. Landscape units can establish a patch-size distribution regime, which specifies the spatial and temporal distribution of cutblocks. In other words, landscape unit objectives can include strategies and conditions for proposing large cutblocks. In the absence of landscape unit plans, large cutblocks can be approved under section 11 of the OPR. Section 11(3)(b)(ii) provides discretion to the district manager to allow cutblocks greater than 60 hectares if the cutblocks are consistent with the structural characteristics and the temporal and spatial distribution of natural openings.

The *Biodiversity Guidebook* provides advice about the structure and distribution of natural openings. The guidebook indicates that cutblocks (and subsequent patches) greater than 250

hectares but less than 1,000 hectares are consistent with what is found naturally. Specifically, cutblocks greater than 250 hectares and less than 1,000 hectares are consistent with natural disturbance type 3 (NDT 3) when the areas do not have Douglas fir throughout the stands. The guidebook recommends that between 60 to 80 percent of the area should be in patches of 250 to 1,000 hectares. As well, the guidebook recommends that 10 to 20 percent of the forest area should be in patches 40 to 250 hectares in size. The guidebook also notes that past forest harvesting using medium-sized cutblocks has resulted in a fragmented forest unlike the natural patterns. The guidebook recommends that future harvesting should use large aggregated cutblocks that mimic the natural pattern of large fires and large unburned areas. The guidebook also states that concentrating harvesting in large cutblocks allows for other large areas of older forest to be left intact for extended periods of time.

The amendment contains 57 cutblocks, of which, 21 are greater than 60 hectares. Twenty of these cutblocks are in NDT 3 areas. Only 1 of the 21 large cutblocks was greater than 250 hectares in size. However, several of the cutblocks were adjacent to existing clearcuts or young forest stands. The combination of the proposed cutblocks and old cutblocks create large patches. The amendment provided statistics and analysis to indicate the disturbance patterns emerging as a result of the proposed harvesting and the creation of the large patches. The analysis was provided for each disturbance type in the amendment. The amendment explained that some cutblocks would reduce the amount of fragmentation in the landscape. As well, the licensee proposed stand-level strategies to mitigate the effects of large openings such as the use of small clearcuts, partial cutting, and the strategic placement of wildlife tree patches. The amendment discusses where the large cutblocks are offset by adjacent large areas of mature forest, block by block. Maps in the FDP amendment do not identify these large areas of older forest that would be left intact. The Code requirements for FDPs do not require the identification of these large areas. The decision regarding the future retention or management of these remaining areas of old forests is left to the district manager in the approval of subsequent FDPs.

The recommendations in the *Biodiversity Guidebook* are not mandatory requirements, nor are they legally enforceable. The acceptance of these large cutblocks is at the discretion and judgement of the district manager. In his rationale, the district manager stated there is flexibility in the timber supply area (TSA) that allowed for some latitude in meeting spatial and temporal targets in the guidebook. He was satisfied that the large cutblocks in the amendment were consistent with the structural characteristics and the temporal and spatial distribution of natural openings. The district manager concluded that there was flexibility for interpretation of the guidebook at the TSA level. The district manager considered the guidebook recommendations for large cutblocks of 250 to 1,000 hectares in NDT 3 areas. The district manager also considered the information in the amendment about the disturbance patterns emerging as a result of the proposed harvesting. As well, the district manager took into consideration that the district has a severe beetle infestation and the amendment proposed cutblocks to remove both infested and susceptible stands. Given these conditions, the Board considers the district manager's evaluation followed a rational course, and led to a logical conclusion. The Board considers that it was appropriate for the district manager to conclude that the cutblocks were designed to be consistent with the structural characteristics and the temporal and spatial distribution of natural

openings. The Board concludes the district manager's use of discretion to approve cutblocks greater than 60 hectares in size, under section 11(3)(b)(ii) of the OPR, was acceptable.

4. Did the FDP amendment comply with Code requirements for consideration of the plan's effect on the complainant's business?

The complainant maintained that the district manager did not properly balance the area's natural resource issues and the lodge's business concerns when he approved the amendment. The complainant was concerned about extensive harvesting of healthy trees close to the lodge. The complainant raised several concerns involving increased visibility of the lodge, future windthrow problems, visual quality of the forest stand, forest health and wildlife habitat impacts.

The Code does not require specific consideration of the interest of business owners adjacent to forested Crown lands. Consideration is provided to the general public through the public review and comment provisions in the Code. Section 27(8) of the OPR provides the district manager with the discretion to decide if the opportunity for public review and comment was commensurate with the nature and extent of a person's interest and rights that person has to use an area.

The FDP amendment was available for public review and comment for at least 60 days, as required by the Code. The licensee also presented the FDP amendment at several community forums. Additionally, the district manager made use of section 7(1)(c) of the OPR to require a 30-day referral of the silvicultural plans for the cutblocks in the vicinity of the complainant's lodge.

In the FDP amendment, the licensee responded to the complainant's concern that the proposed harvesting would increase the visibility of the lodge from a nearby forest service road. The road is uphill from the lodge. The amendment noted that visual screening along the road would be used to ensure the lodge was not visible. The amendment also noted that the licensee would develop strategies to mitigate the impacts, in consultation with the lodge owner.

In his approval, the district manager directed the licensee to assess the potential for wind-throw problems along the road. Furthermore, he directed the licensee to propose strategies that would mitigate potential damage to the stands in the silviculture prescriptions.

Recognizing potential impacts on the visual quality of the area as seen from the lake, the district manager directed the licensee to conduct a visual impact assessment, under section 37(1) of the OPR.

Concerns with wildlife were considered in both the amendment and by the district manager's approval letter. The amendment listed a range of measures that the licensee stated it would use to protect moose winter range, and the licensee stated that stand-level assessments would ensure the appropriate wildlife management technique was used on each given cutblock. The district manager's rationale indicates that wildlife values were accounted for in his decision. Specifically, the district manager instructed the licensee to have a qualified professional review the silviculture prescriptions and include wildlife habitat protection measures in the plans.

The district manager made the FDP approval subject to several conditions related to forest health. The conditions included providing additional beetle information and a commitment to harvest only the minimum required number of trees for the block adjacent to the complainant's lodge. The district manager's rationale noted the options for beetle control, and concluded that harvesting combined with follow-up beetle treatments was warranted. As stated earlier, during the review of the FDP, the district manager also required the licensee to provide pest incidence surveys on several cutblocks, including those in the Morrison Arm area. This information was required in accordance with section 26 of the OPR.

The district manager met with the complainant to discuss the issues, and addressed the concerns of the complainant in his decision and rationale.

The Board concludes that, for the purpose of section 27(8) of the OPR, the district manager considered the requirements and properly fulfilled his responsibility. The district manager properly decided that the opportunity provided to the complainant for review and comment was commensurate with the nature and extent of the complaint's interest and rights to use the area. Key in reaching this conclusion is the district manager's requirement for referral of the silviculture prescriptions to the complainant.

Conclusions

1. Did the FDP amendment properly consider forest ecosystem networks?

The FDP complied with section 18(1)(e)(vi) of the OPR, the requirement to identify known forest ecosystem networks. The draft FENs had not been made known under the Code. Additionally, the amendment contained measures to manage important resource values, such as moose winter range. The draft FENs primarily identified key habitat for moose. The district manager considered wildlife values when he determined that the amendment adequately managed and conserved the forest resources. The district manager followed the recommendation of MWLAP to require a qualified professional review several silviculture prescriptions. The approval of the FDP amendment properly considered the draft FENs.

2. Did the FDP amendment comply with the Code requirements for forest health?

The licensee met the conditions of section 13(a) and section 18(1)(t) of the OPR, which requires the licensee to record and evaluate the occurrence of detected forest health factors and propose management strategies to reduce those risks during the term of its plan. At the time of submission, the licensee used the best information available to meet the conditions of the OPR. As well, the licensee was following a strategy that attempted to remove infested and susceptible stands. The licensee's amendment made use of existing beetle hazard and risk information. The FDP amendment did comply with Code requirements for forest health.

3. Did the FDP amendment comply with the requirements for discretionary approval of cutblocks greater than 60 hectares?

The Board concludes the district manager's use of discretion to approve cutblocks greater than 60 hectares in size, under section 11(3)(b)(ii) of the OPR, was acceptable. The Board considers that it was appropriate for the district manager to conclude that the cutblocks were designed to be consistent with the structural characteristics and the temporal and spatial distribution of natural openings. The FDP amendment did comply with the requirement for discretionary approval of cutblocks greater than 60 hectares.

4. Did the FDP amendment comply with Code requirements for consideration of the plan's effect on the complainant's business?

The Code does not require specific consideration of the interest of business owners adjacent to forested Crown lands. The Board concludes the district manager properly decided that the opportunity provided to the complainant for review and comment was commensurate with the nature and extent of the complaint's interest and rights to use the area. The FDP amendment and the district manager's rationale indicated that the concerns raised by the complaint were given consideration. Key in reaching this conclusion is that the district manager required referral of the silviculture prescriptions to the complainant.

Commentary

The province has a vested interest in forest health issues such as the beetle epidemic. Forest health issues can affect both the economy and the environment. In order to maintain healthy forests and a sustainable forest industry in B.C., it is important that forest health problems are managed effectively.

The ongoing bark beetle epidemic in B.C. is an issue that requires strategic planning across the region it affects. An effective beetle strategy should recognize and incorporate landscape level targets and strategies for managing forest resources, thereby giving clear guidance to statutory decision-makers for their use in approving operational plans. This would include guidance on if and how large cutblocks can be approved. Future forest harvesting should ensure that these higher level objectives, targets and strategies are considered.

The Morice Forest District does not have a completed land and resource management plan (LRMP) or any landscape-level plans and objectives. The lack of plans restricts public input into the creation of objectives for forest management. This is especially important considering concerns with visual quality management, tourism, wildlife values and recreation values in the vicinity of Babine Lake.

Without landscape unit plans or LRMPs, approval of large cutblocks will raise public concerns that other forest resources are being compromised. In the absence of landscape unit plans or LRMPs, the Code allows district managers to approve large cutblocks if district managers determine that the large cutblocks are consistent with patterns of natural disturbances.

The *Biodiversity Guidebook* indicates that large cutblocks or patches are commonly found in many natural ecosystems. However, the guidebook also states that concentrating harvesting in large cutblocks also requires corresponding large areas of older forest to be left intact for extended periods. The Morice Forest District has a severe beetle infestation, which makes strategic planning for both beetles and biodiversity a priority. Future FDPs and subsequent approvals should consider the *Biodiversity Guidebook* recommendations. Specifically, they should heed the recommendation that large areas of older forest need to be identified and left intact in conjunction with development plans that propose large cutblocks. The Board notes that the licensee is currently developing some models that will aid in future design of cutblocks across the landscape. Future modelling may influence future rates of harvest in specific areas of the TSA and will be important in addressing biodiversity requirements.

Lastly, the Board notes that there have been noteworthy efforts to address the concerns of the complainant by MOF, MWLAP and the licensee. The Board commends these efforts and urges all the participants to continue working in a co-operative manner.